



ENTERED
09/13/2013

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE:

GENESIS PRODUCING COMPANY, LP

Debtor.

Case No: 13-34374-H4-11
(Chapter 11)

GENESIS PRODUCING COMPANY, LP

Plaintiff

VS

SMITH BIG OIL CORPORATION,
TODD M. SMITH, J. MORGAN SMITH,
PHILIP N. BELL and JAMES A.
WHITSON

Defendants

ADVERSARY NO. 13-03177

ORDER OF DISMISSAL
(Relates to Dkt ## 1 & 15)

On September 6, 2013, Debtor Genesis Producing Company, L.P.'s ("Debtor") Emergency Complaint, Request for Temporary Restraining Order, and Request for Order Directing the Deposit of Funds into the Registry of the Bankruptcy Clerk (Dkt. #1) came on for hearing. In response to the Debtor's Complaint, Smith Big Oil, Inc. and Todd M. Smith (collectively "SBO") filed their Amended Response and Objection to Debtor Genesis Producing Company, L.P.'s Emergency (i) Request for Temporary Restraining Order, and (ii) Request for Order Directing the Deposit of Funds into the Registry of the Bankruptcy Court (Dkt #15). In their response, SBO asserted that the Debtor's Complaint should be dismissed under principles of collateral estoppel, *res judicata*, and discretionary abstention, as well as the *Rooker-Feldman*

Doctrine, because the Debtor had previously filed, prosecuted and lost a lawsuit against SBO involving the same claims, issues and operative facts in *Genesis Producing Company, L.P. v. Smith Big Oil Corporation, Todd M. Smith, and James A. Whitson, Jr.*, Cause No. 2012- 30652 in the 152nd District Court of Harris County, Texas (“the state court lawsuit”). The Court agrees with SBO. The Court finds and concludes that (i) the Debtor’s attempted non-suit of the state court lawsuit was ineffective because the Debtor filed its non-suit after the state court had announced its ruling to the parties on the parties’ competing summary judgment motions dismissing the Debtor’s claims, (ii) the Debtor’s Complaint here should be dismissed under the principle of collateral estoppel, and (iii) even if collateral estoppel does not require dismissal of Debtor’s Complaint, the Debtor’s Complaint should be dismissed under the principle of discretionary abstention. With no further notice being required, it is accordingly:

ORDERED THAT:

The Debtor’s Complaint and this proceeding are dismissed with prejudice, but without prejudice to the Debtor pursuing its claims in the state court lawsuit.

Dated: September 13, 2013.



THE HONORABLE JEFF BOHM,
UNITED STATES BANKRUPTCY JUDGE

APPROVED:

/s/ Tom Kirkendall

Tom Kirkendall

State Bar No. 11517300/SDTX No. 02287

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